

Introduced by Senator Monning

February 19, 2014

An act to amend Sections 13142, 13144, 13145, 13148, 13149, and 13152 of the Food and Agricultural Code, relating to pesticides.

LEGISLATIVE COUNSEL'S DIGEST

SB 1117, as introduced, Monning. Pesticide Contamination Prevention Act.

Existing law requires the registration of pesticides in this state for agricultural use, and requires a person who has registered a pesticide to submit specified information for each active ingredient in each pesticide registered. Existing law requires the Department of Pesticide Regulation to establish specific numerical values for factors relating to pesticide use and groundwater, including, among others, water solubility and field dissipation, and to post certain information on its Internet Web site for each pesticide registered. Existing law requires the Director of Pesticide Regulation to establish, by regulation, a Groundwater Protection List that includes pesticides that have the potential to pollute groundwater, and, under certain circumstances, to regulate their use.

This bill would revise the information required to be included in the Groundwater Protection List to include each active ingredient, other specified ingredient, or degradation product of a pesticide that, when applied, has the potential to pollute groundwater, and would require the director to develop a peer reviewed method to determine that potential, as specified. The bill would require the director to regulate each active ingredient, other specified ingredient, or degradation product of a pesticide on the Groundwater Protection List, and would revise the information that the department is required to post on its Internet Web site. The bill would delete provisions requiring dealers of pesticides to

make quarterly reports to the director on certain sales of pesticides to persons who are not required to file a report, as specified. The bill would make conforming and other related changes to provisions relating to the detection and regulation of active ingredients, other specified ingredients, and degradation products of pesticides.

Existing law specifies that the director may authorize the continued registration, sale, and use of a pesticide found to have migrated, including if an active ingredient is found in the groundwaters in the state, to avoid severe economic hardship on the state's agricultural industry. Existing law requires the department to conduct ongoing soil and groundwater monitoring of those pesticides for which the director has authorized continued registration, sale, and use.

This bill would expand the director's authority to authorize the continued use of pesticides under specified other circumstances, and would specify that those pesticides that are subject to ongoing monitoring shall not be subject to review again unless the director determines subsequent review is necessary. The bill would revise the definitions applicable to the provisions above relating to pesticide contamination prevention.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 13142 of the Food and Agricultural Code
- 2 is amended to read:
- 3 13142. For the purposes of this article, the following definitions
- 4 apply:
- 5 (a) "Active ingredient" has the same meaning as defined in
- 6 Section 136 of Title 7 of the United States Code.
- 7 (b) "Agricultural use" has the same meaning as defined in
- 8 Section 11408.
- 9 (c) "Board" means the State Water Resources Control Board.
- 10 (d) "Chemigation" means a method of irrigation whereby a
- 11 pesticide is mixed with irrigation water before the water is applied
- 12 to the crop or to the soil.
- 13 (e) "Degradation product" means a substance resulting from
- 14 the transformation of a pesticide by physicochemical or
- 15 biochemical means.

(f) “Groundwater protection data gap” means that, for a particular pesticide, the director, after study, has been unable to determine that each study required pursuant to subdivision (a) of Section 13143 has been submitted or that each study submitted pursuant to subdivision (a) of Section 13143 is valid, complete, and adequate.

(g) “Henry’s Law constant” is an indicator of the escaping tendency of dilute solutes from water and is approximated by the ratio of the vapor pressure to the water solubility at the same temperature.

(h) “Pesticide” is defined in Section 12753.

(i) “Pesticide registrant” means a person that has registered a pesticide pursuant to this chapter.

(j) *“Pollute” means to introduce a pesticide product into the groundwaters of the state resulting in an active ingredient, other specified ingredient, or a degradation product of a pesticide above a level that does not cause adverse health effects, accounting for an adequate margin of safety.*

~~(j)~~

~~(k) “Pollution” means the introduction into the groundwaters of the state of an active ingredient, other specified product, or degradation product of an active ingredient of a pesticide above a level, with an adequate margin of safety, that does not cause adverse health effects. the consequence of polluting.~~

~~(k)~~

(l) “Soil adsorption coefficient” is a measure of the tendency of pesticides, or their biologically active transformation products, to bond to the surfaces of soil particles.

~~(l)~~

(m) “Soil microbial zone” means the zone of the soil below which the activity of microbial species is so reduced that it has no significant effect on pesticide breakdown.

SEC. 2. Section 13144 of the Food and Agricultural Code is amended to read:

13144. (a) The department shall establish specific numerical values for water solubility, soil adsorption coefficient (Koc), hydrolysis, aerobic and anaerobic soil metabolism, and field dissipation. The values established by the department shall be at least equal to those established by the Environmental Protection Agency. The department shall revise the numerical values when

1 the department finds that the revision is necessary to protect the
2 groundwater of the state. The numerical values established or
3 revised by the department shall always be at least as stringent as
4 the values being used by the Environmental Protection Agency at
5 the time the values are established or revised by the department.

6 (b) On or before December 31, 2004, and updated at least
7 annually thereafter, the director shall post the following information
8 on the department's *Internet* Web site for each pesticide registered
9 for agricultural use and during years that specific numerical values
10 are revised:

11 (1) A list of each active ingredient, other specified ingredient,
12 or degradation product of an active ingredient of a pesticide for
13 which there is a groundwater protection data gap.

14 ~~(2) A list of each pesticide that contains an active ingredient,~~
15 ~~other specified ingredients, or degradation product of an active~~
16 ~~ingredient that is greater than one or more of the numerical values~~
17 ~~established pursuant to subdivision (a), or is less than the numerical~~
18 ~~value in the case of soil adsorption coefficient, in both of the~~
19 ~~following categories:~~

20 ~~(A) Water solubility or soil adsorption coefficient (Koc);~~

21 ~~(B) Hydrolysis, aerobic soil metabolism, anaerobic soil~~
22 ~~metabolism, or field dissipation.~~

23 (2) *The Groundwater Protection List established pursuant to*
24 *subdivision (d) of Section 13145.*

25 (3) For each pesticide listed pursuant to paragraph (2) for which
26 information is available, a list of the amount sold in California
27 during the most recent year for which sales information is available
28 and where and for what purpose the pesticide was used, when this
29 information is available in the pesticide use report.

30 (c) The department shall determine, to the extent possible, the
31 toxicological significance of the ~~degradation products and other~~
32 ~~specified ingredients identified pursuant to paragraph (2) of~~
33 ~~subdivision (b).~~ *pesticides listed in the Groundwater Protection*
34 *List.*

35 SEC. 3. Section 13145 of the Food and Agricultural Code is
36 amended to read:

37 13145. (a) Any registrant of a pesticide identified in paragraph
38 (1) of subdivision (b) of Section 13144 is subject to a fine of up
39 to ten thousand dollars (\$10,000) for each day the groundwater

1 protection data gap exists. In determining the amount of the fine,
2 the director shall consider both of the following:

3 (1) The extent to which the registrant has made every effort to
4 submit valid, complete, and adequate information within the
5 required time limits.

6 (2) Circumstances beyond the control of the registrant that have
7 prevented the registrant from submitting valid, complete, and
8 adequate information within the required time limits.

9 (b) If there is a dispute between the director and a registrant
10 regarding the existence of a groundwater protection data gap and
11 the director desires to levy a fine on the registrant pursuant to this
12 section, the director shall submit the issues of the dispute to the
13 subcommittee created pursuant to subdivision (b) of Section 13150.
14 The subcommittee shall review the evidence submitted by the
15 registrant and the director and make recommendations to the
16 director on whether or not the groundwater data gap exists.

17 (c) Subdivisions (a) and (b) shall not apply to pesticide products
18 whose registration has lapsed or has been canceled, or to products
19 that have been granted a current extension pursuant to Section
20 13143.

21 (d) ~~The director shall, by regulation, establish a list of pesticides~~
22 ~~that have the potential to pollute groundwater. The list shall be~~
23 ~~entitled the Groundwater Protection List. Notwithstanding Chapter~~
24 ~~3.5 (commencing with Section 11340) of Part 1 of Division 3 of~~
25 ~~Title 2 of the Government Code, the director shall immediately~~
26 ~~place all pesticides identified in paragraph (2) of subdivision (b)~~
27 ~~of Section 13144 on the Groundwater Protection List and shall~~
28 ~~regulate the use of these pesticides if the pesticide is intended to~~
29 ~~be applied to or injected into the soil by ground-based application~~
30 ~~equipment or by chemigation, or the label of the pesticide requires~~
31 ~~or recommends that the application be followed, within 72 hours,~~
32 ~~by flood or furrow irrigation. The director shall adopt regulations~~
33 ~~to carry out this article. The regulations shall include, but are not~~
34 ~~limited to, the following:, which shall include each active~~
35 ~~ingredient, other specified ingredient, or degradation product of~~
36 ~~a pesticide that, when applied, has the potential to pollute~~
37 ~~groundwater.~~

38 (e) *The director shall develop a peer reviewed method to*
39 *determine the potential of a pesticide to pollute groundwater using*
40 *specific numerical values established pursuant to subdivision (a)*

1 of Section 13144. The director may revise this method, subject to
2 peer review. The peer review shall be conducted using the same
3 process as described in Section 57004 of the Health and Safety
4 Code. When a chemical is listed by regulation using this method,
5 no further peer review of the method is required.

6 (f) Each active ingredient, other specified ingredient, or
7 degradation product of a pesticide on the Groundwater Protection
8 List that is detected shall be regulated to eliminate the potential
9 to pollute groundwater.

10 ~~(h)~~

11 (g) Any person who uses a pesticide that has been placed on
12 the Groundwater Protection List and does not file a report pursuant
13 to Section 12979, is required to report to the county agricultural
14 commissioner the use of the pesticide on a form prescribed by the
15 director. The reporting deadline shall conform to the deadline
16 established for the reporting of the use of restricted materials.

17 ~~(2) Dealers of pesticides shall make quarterly reports to the~~
18 ~~director of all sales of pesticides that have been placed on the~~
19 ~~Groundwater Protection List to persons who are not otherwise~~
20 ~~required to file a report pursuant to either paragraph (1) or Section~~
21 ~~12979. This report shall include lists of all sales by purchases.~~

22 SEC. 4. Section 13148 of the Food and Agricultural Code is
23 amended to read:

24 13148. (a) In order to more accurately determine the mobility
25 and persistence of the pesticides identified pursuant to paragraph
26 ~~(2) of subdivision (b) of Section 13144 in the Groundwater~~
27 ~~Protection List~~, and to determine if these pesticides have migrated
28 to groundwaters of the state, the director shall conduct soil and
29 groundwater monitoring statewide in areas of the state where the
30 pesticide is primarily used or where other factors identified
31 pursuant to Section 13143 and ~~subdivision (b) of Section 13144,~~
32 ~~the Groundwater Protection List~~, including physicochemical
33 characteristics and use practices of the pesticides, indicate a
34 probability that the pesticide may migrate to the groundwaters of
35 the state. *The department shall monitor for the active ingredient,*
36 *other specified ingredient, or degradation product of the pesticide*
37 *listed in the Groundwater Protection List.* The monitoring shall
38 commence within one year after the pesticide is placed on the
39 Groundwater Protection List and shall be conducted in accordance
40 with standard protocol and testing procedures established pursuant

1 to subdivision (b). Monitoring programs shall replicate conditions
2 under which the pesticide is normally used in the area of
3 monitoring. In developing a monitoring program, the director shall
4 coordinate with other agencies that conduct soil and groundwater
5 monitoring.

6 (b) Within 90 days after a pesticide is placed on the Groundwater
7 Protection List pursuant to subdivision (d) of Section 13145, the
8 director, in consultation with the board, shall develop a standard
9 protocol and testing procedure for each pesticide identified pursuant
10 to subdivision (d) of Section 13145.

11 (c) The director shall report all monitoring results to the ~~State~~
12 ~~Department of Health Services~~ *State Department of Public Health*
13 and the board.

14 SEC. 5. Section 13149 of the Food and Agricultural Code is
15 amended to read:

16 13149. (a) Within 90 days after ~~a~~ *the active ingredient, other*
17 *specified ingredient, or degradation product of a listed* pesticide
18 ~~is found detected~~ under any of the conditions listed in paragraph
19 ~~(1), (2), or (3), (1) or (2),~~ the director shall determine whether the
20 ~~pesticide detection~~ resulted from agricultural use in accordance
21 with state and federal laws and regulations, and shall state in
22 writing the reasons for the determination.

23 (1) An active ingredient, *other specified ingredient, or*
24 *degradation product* of a pesticide has been found at or below the
25 deepest of the following depths:

26 (A) Eight feet below the soil surface.

27 (B) Below the root zone of the crop where the active ingredient,
28 *other specified ingredient, or degradation product* was found.

29 (C) Below the soil microbial zone.

30 (2) An active ingredient, *other specified ingredient, or*
31 *degradation product* of a pesticide has been found in the
32 groundwaters of the state.

33 ~~(3) The pesticide has degradation products or other specified~~
34 ~~ingredients that pose a threat to public health and that have been~~
35 ~~found under the conditions specified for active ingredients in either~~
36 ~~paragraph (1) or (2).~~

37 (b) Upon a determination by the director that a pesticide meets
38 any of the conditions specified in paragraph ~~(1), (2), or (3)~~ *(1) or*
39 *(2)* of subdivision (a) as a result of agricultural use in accordance
40 with state and federal laws and regulations, the director shall

1 immediately notify the registrant of the determination and of the
2 registrant's opportunity to request a hearing pursuant to subdivision
3 (c).

4 (c) Any pesticide that meets any of the conditions in subdivision
5 (b) shall be subject to Section 13150 if the registrant of the
6 pesticide requests, within 30 days after the notice is issued, that
7 the subcommittee conduct a hearing, as described in Section 13150.
8 Notwithstanding any other ~~provision of law~~, if the registrant does
9 not request the hearing within 30 days after the notice is issued,
10 the director shall cancel the registration of the pesticide.

11 (d) ~~For the purposes of this section~~, any finding of a pesticide
12 shall result from either an analytical method approved by the
13 department that provides unequivocal identification of a chemical,
14 such as mass spectroscopy, or from verification, within 30 days,
15 by a second analytical method or a second analytical laboratory
16 approved by the department.

17 SEC. 6. Section 13152 of the Food and Agricultural Code is
18 amended to read:

19 13152. (a) The department shall conduct ongoing soil and
20 groundwater monitoring of any pesticide whose continued use is
21 permitted *following the issuance of findings by the director*
22 ~~pursuant to paragraph (3) of subdivision (d) of Section 13150.~~
23 *Pesticides that are monitored pursuant to this subdivision shall*
24 *not be subject to review again pursuant to Section 13150 unless*
25 *the director makes a determination that subsequent review is*
26 *necessary.*

27 (b) Any pesticide monitored pursuant to this section that is
28 determined, by review of monitoring data and any other relevant
29 data, to pollute the groundwaters of the state two years after the
30 director takes action pursuant to ~~paragraph (3) of subdivision (d)~~
31 of Section 13150 shall be canceled unless the director has
32 determined that the adverse health effects of the pesticide are not
33 carcinogenic, mutagenic, teratogenic, or neurotoxic.

34 (c) The department shall maintain a statewide database of wells
35 sampled for pesticide active ingredients. All agencies shall submit
36 to the department, in a timely manner, the results of any well
37 sampling for pesticide active ingredients and the results of any
38 well sampling that detect any pesticide active ingredients.

39 (d) Not later than June 30, 1986, the director, the ~~State~~
40 ~~Department of Health Services~~ *State Department of Public Health,*

1 and the board shall jointly establish minimum requirements for
2 well sampling that will ensure precise and accurate results. The
3 requirements shall be distributed to all agencies that conduct well
4 sampling. All well sampling conducted after December 1, 1986,
5 shall meet the minimum requirements established pursuant to this
6 subdivision.

7 (e) The department shall post the following information on its
8 *Internet* Web site, updated no later than December 1 of each year:

9 (1) The number of wells sampled for pesticide active ingredients,
10 the location of the wells from which the samples were taken, the
11 well numbers, if available, and the agencies responsible for drawing
12 and analyzing the samples.

13 (2) The number of well samples with detectable levels of
14 pesticide active ingredients, the location of the wells from which
15 the samples were taken, the well numbers, if available, and the
16 agencies responsible for drawing and analyzing the samples.

17 (3) An analysis of the results of well sampling described in
18 paragraphs (1) and (2), to determine the probable source of the
19 residues. The analysis shall consider factors such as the physical
20 and chemical characteristics of the pesticide, volume of use and
21 method of application of the pesticide, irrigation practices related
22 to use of the pesticide, and types of soil in areas where the pesticide
23 is applied.

24 (4) Actions taken by the director and the board to prevent
25 pesticides from migrating to groundwaters of the state.